

STATUTORY REPORT

**DISTRICT ATTORNEY
DISTRICT 5**

**BOGUS CHECK RESTITUTION PROGRAM
SUPERVISION PROGRAM
RESTITUTION AND DIVERSION PROGRAM
PROPERTY FORFEITURE PROGRAM**

For the year ended June 30, 2013



*Independently serving the citizens of
Oklahoma by promoting the
accountability and fiscal integrity of
governmental funds.*



Oklahoma State
Auditor & Inspector
Gary A. Jones, CPA, CFE

**FRED C. SMITH, DISTRICT ATTORNEY
DISTRICT 5**

**STATUTORY REPORT
BOGUS CHECK RESTITUTION PROGRAM
SUPERVISION PROGRAM
RESTITUTION AND DIVERSION PROGRAM
PROPERTY FORFEITURE PROGRAM**

**FOR THE YEAR ENDED
JUNE 30, 2013**

This publication, issued by the Oklahoma State Auditor and Inspector's Office as authorized by 74 O.S. § 212.E and 22 O.S. §§ 114, 991d, 991f-1.1, and 63 O.S. § 2-506 has not been printed, but is available on the agency's website (www.sai.ok.gov) and in the Oklahoma Department of Libraries Publications Clearinghouse Digital Collection, pursuant to 74 O.S. § 3105.B.



Oklahoma State Auditor & Inspector

2300 N. Lincoln Blvd. • State Capitol, Room 100 • Oklahoma City, OK 73105 • Phone: 405.521.3495 • Fax: 405.521.3426

May 23, 2014

Fred C. Smith, District Attorney
District 5
Comanche County Courthouse
Lawton, Oklahoma 73501

Transmitted herewith is the statutory report for the District Attorney of District 5, Comanche and Cotton Counties, Oklahoma (the District) for the fiscal year ended June 30, 2013.

A report of this type is critical in nature; however, we do not intend to imply that there were not commendable features in the present accounting and operating procedures of the District.

The goal of the State Auditor and Inspector is to promote accountability and fiscal integrity in state and local government. Maintaining our independence as we provide this service to the taxpayers of Oklahoma is of utmost importance.

We wish to take this opportunity to express our appreciation for the assistance and cooperation extended to our office during our engagement.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gary A. Jones".

GARY A. JONES, CPA, CFE
OKLAHOMA STATE AUDITOR & INSPECTOR

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INTRODUCTORY INFORMATION

BOGUS CHECK PROGRAM

The bogus check program was created by the Oklahoma Legislature in 1982 as a special type of deferred prosecution program and every district attorney is required to operate a bogus check program. The program provides an alternative way to handle bogus check cases without any additional cost to courts, prosecutors, or the state prison system. The primary emphasis of the program is collecting restitution for the victim of the crime, rather than punishing the offender.

Bogus checks are a significant cost to business, a cost that is passed on to the consumer and paid by all citizens and taxpayers in the state. The bogus check program has been an effective way to address the economic problem caused by bogus checks. The program offers a way to address criminal conduct without sending a large number of offenders to state correctional facilities.

RESTITUTION AND DIVERSION PROGRAM

The restitution and diversion program was created by the Oklahoma Legislature in 2001 as a special type of deferred prosecution program. The legislation required that each district attorney create such a program. The purpose of the program is to allow the district attorney the discretion to divert criminal complaints involving property crimes from criminal court and to collect restitution for victims.

The program allows the district attorney's office to receive, disburse, and monitor victim restitution payments. The program offers an alternative way to address criminal conduct.

DISTRICT ATTORNEY SUPERVISION PROGRAM

The district attorney supervision program was created by the Oklahoma Legislature in 2005 as an alternative from supervision by the Department of Corrections. When the court imposes a deferred or a suspended sentence for any offense and does not order supervision by the Department of Corrections, the offender shall be required to pay the district attorney a monthly supervision fee. However, the legislation provides that in hardship cases, the district attorney shall expressly waive all or part of the fee.

DISTRICT ATTORNEY PROPERTY FORFEITURE PROGRAM

Most district attorneys in the state have a Property Forfeiture Fund. The fund is not subject to fiscal year limitations and is to be used for enforcement of controlled dangerous substance laws, drug abuse prevention and education, and is maintained by the District Attorney to be used at his or her discretion for those purposes. The revenues for said fund come from the proceeds of forfeited assets.

**FRED C. SMITH, DISTRICT ATTORNEY
DISTRICT 5
STATUTORY REPORT
JUNE 30, 2013**

Any cash, vehicles, real property, or other assets used in the commission of or acquired as a result of a crime as described in the Uniform Controlled Dangerous Substances Act is presumed to be forfeitable.

Asset forfeiture is an effective law enforcement tool used by local district attorneys to deprive criminals of their ill-gotten gains by seizing the proceeds of criminal activity and property used to facilitate crime. The proceeds of seized, forfeited assets make a substantial contribution to the investigation and prosecution of drug related offenses.



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Statutory Report

Fred C. Smith, District Attorney
District 5
Comanche County Courthouse
Lawton, Oklahoma 73501

For the purpose of complying with 74 O.S. § 212.E and 22 O.S. §§ 114, 991d, 991f-1.1, and 63 O.S. § 2-506, we have performed the following procedures as they relate to the records of the District Attorney's programs for the fiscal year June 30, 2013.

Bogus Check, Supervision, and Restitution and Diversion Programs:

- Determine that internal controls are designed and operating over the collections and expenditures process.
- Examine fees to determine that the correct fees are assessed, receipted, and deposited in compliance with 28 O.S. § 153, 22 O.S. §§ 114, 991d, 991f-1.1, and 19 O.S. § 215.11.
- Determine whether expenditures are used to defray the expenses of the District Attorney's office in accordance with 22 O.S. §§ 114 and 991f-1.1, and whether expenditures are supported by approved claims, invoices, and verification that goods or services paid for were received.
- Determine whether the District Attorney reconciles all accounts with the County Treasurer's ledgers.
- Determine whether the District Attorney prepares and submits an annual report to the District Attorneys Council that shows total deposits and total expenditures for the Bogus Check Restitution Program, the Supervision Program, and Restitution and Diversion Program.

Property Forfeiture Program:

- Determine that internal controls are designed and operating over the collections and expenditures process.
- Determine that the District Attorney maintains a true and accurate inventory of all property seized in accordance with 63 O.S. § 2-506.K.
- Review sale documentation for selected cases to determine whether forfeited assets were sold after due notice at public auction to the highest bidder in accordance with 63 O.S. §§ 2-506 and 2-508.
- Review the distribution of proceeds to determine the distribution was in accordance with court orders pursuant to 63 O.S. §§ 2-506.K and 2-508.
- Test expenditures to determine they are supported by approved claims, invoices, and independent verification that goods or services paid for were received.

- Determine if the District Attorney prepared and submitted an annual report to the District Attorneys Council showing the total deposits, total expenditures, beginning and ending balances in accordance with 63 O.S. § 2-506.L.3.
- Determine if the District Attorney reconciles account balances with the County Treasurer.

All information included in the financial records of the bogus check restitution program, supervision program, restitution and diversion program, and the property forfeiture program are the representation of the District Attorney for their respective district.

Our engagement was limited to the procedures performed above and was less in scope than an audit performed in accordance with auditing standards generally accepted in the United States of America. Accordingly, we do not express an opinion on any basic financial statement of Comanche or Cotton County.

Based on our procedures performed, we have presented our findings in the accompanying schedule.

This report is intended for the information and use of the District Attorney and the County Officials. However, this report is a matter of public record and its distribution is not limited.

A handwritten signature in blue ink, appearing to read "Gary A. Jones", with a long horizontal flourish extending to the right.

GARY A. JONES, CPA, CFE
OKLAHOMA STATE AUDITOR & INSPECTOR

February 21, 2014

SCHEDULE OF FINDINGS AND RESPONSES

Finding 2013-1 – Noncompliance Over Custody of Property Forfeiture Disbursements (Repeat Finding)

Condition: Property forfeited is held by the local law enforcement agency, rather than the District Attorney's office. When the property is ordered forfeit by the court, the law enforcement agency holding the forfeited funds deposits the money with the District Attorney. The District Attorney's office then writes a voucher to the law enforcement agency for the total amount forfeited.

Cause of Condition: The forfeited property and money is not in the custody of the District Attorney as required by state statutes.

Effect of Condition: The statutes that established the procedures for control of forfeited assets are not being followed.

Recommendation: The Oklahoma State Auditor and Inspector's Office (OSAI) recommends the District Attorney follow the guidelines as provided by Title 63 O.S. § 2-506 D and Title 63 O.S. § 2-506 K.

Management Response:

District Attorney: There is a difference of opinion in the interpretation of this statute. The system used by District 5 results in better accountability than the recommended process. All items seized for forfeiture are held in the property vault or other secure area of the law enforcement agency making the seizure. After reviewing the case and discussions with the investigators, a decision is made to either release those items back to the owner or file a petition for forfeiture, which sets out with specificity the amount of money or items to be forfeited. Subsequently, an order of forfeiture may or may not be granted by the District Court. If the forfeiture is denied, the agency in possession of the money or item is directed to return it to the owner. If the forfeiture is granted, then the item or money is passed through the statutorily mandated District Attorney's forfeiture account to insure that the amount of money or items originally seized is the same as the amount of money or item reflected on the petition for forfeiture. Those amounts or items are verified to the final order of forfeiture signed by the District Judge. The process currently in effect is more efficient, accurate and places the possibility of liability for loss or damage on the agency seizing the asset and not on this office.

Criteria: Title 63 O.S. § 2-506 D states in part, "All items forfeited in this section shall be forfeited under the procedures established in Section 2-506 of this title. Whenever any item is forfeited pursuant to this section except for items confiscated by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Department of Public Safety, the Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws Enforcement Commission, the Department of Corrections, or the Office of the Attorney General, the district court of the district shall order that such item, money, or monies derived from the sale of such item be deposited by the state, county or city law

enforcement agency which seized the item in the revolving fund provided for in Section 2-506 of this title.”

Title 63 O.S. § 2-506 K states in part, “Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the office of the district attorney of the county wherein the property was seized, subject only to the orders and decrees of the court or the official having jurisdiction thereof; said official shall maintain a true and accurate inventory and record of all such property seized under the provisions of this section. The provisions of this subsection shall not apply to property taken or detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Department of Public Safety, the Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws Enforcement Commission, the Department of Corrections or the Office of the Attorney General. Property taken or detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Department of Public Safety, the Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws Enforcement Commission, the Department of Corrections or the Office of the Attorney General shall be subject to the provisions of subsections E and F of Section 2-503 of this title.”

Finding 2013-2 – Inadequate Internal Controls Over Computer Systems of Bogus Check, Restitution and Diversion, and Supervision Programs (Repeat Finding)

Condition: Based upon inquiry and observation of internal controls over the District’s computer system, we noted the following weaknesses in the security of the system:

- A time-out security measure has not been assigned in the system.
- Employees are not required to log out of the system when leaving their workstation.

Cause of Condition: Procedures have not been designed to strengthen the security of the computer system used by the District.

Effect of Condition: These weaknesses could result in unauthorized use, undetected errors, and a misappropriation of funds.

Recommendation: OSAI recommends management be aware of these conditions and realize that additional internal controls are needed to engage the software system to ensure the credibility of accounting functions.

Management Response:

District Attorney: Our system is maintained and controlled by the IT Division at the District Attorneys Council and/or the Office of Management and Enterprise Services (OMES). They have not undertaken to establish these procedures nor offered to do so. We use extra caution with regard to access to an individual’s information, and the computer access is seldom, if ever, left unsupervised.

Auditor Response: Procedures have not been designed to adequately secure the IT system from unauthorized use.

Criteria: Accountability and stewardship are overall goals of management in the accounting of funds. To help ensure a proper accounting of funds, transactions should be identifiable by employee and corrections should be adequately approved and documented by a supervisor or official.

Finding 2013-3 – Inadequate Internal Controls Over the Processes of Collections and Disbursements (Repeat Finding)

Condition: Regarding the processes of collections and disbursements within both Comanche County and Cotton County, the duties of receipting, depositing, recording, reconciling, and the authorization and execution of transactions are not adequately segregated.

Cause of Condition: Procedures have not been designed to adequately segregate the duties over all accounting functions of the office.

Effect of Condition: A single person having responsibility for more than one area of accounting functions could result in unrecorded transactions, misstated financial reports, clerical errors, or misappropriation of funds not being detected in a timely manner.

Recommendation: OSAI recommends that management be aware of these conditions. A concentration of duties and responsibilities in a limited number of individuals is not desired from a control point of view. The most effective controls lie in management's overseeing of office operations and a periodic review of operations. In the event that a segregation of duties is not possible due to limited personnel, OSAI recommends implementing compensating controls to mitigate the risks involved with a concentration of duties. Compensating controls would include separating key processes and/or critical functions of the office, and having management review and approve accounting functions.

Management Response:

District Attorney: Due to lower and repeated reductions in state appropriations, there are insufficient funds available to hire the number of staff necessary to comply with this finding. We have implemented the best safeguards possible with limited resources.

Criteria: Accountability and stewardship are overall goals of management in the accounting of funds. An important aspect of internal controls is the safeguarding of assets. Internal controls over safeguarding of assets constitute a process, affected by management and other personnel, designed to provide reasonable assurance regarding prevention or timely detection of unauthorized transactions and safeguarding assets from misappropriation.

Finding 2013-4 – Lack of Policy and Procedures Manual (Repeat Finding)

Condition: Based upon inquiry, the District does not have a policy and procedures manual for all programs held and operated by the District Attorney.

Cause of Condition: The District has not designed a policy and procedures manual.

Effect of Condition: Without written policies and procedures, there exists an opportunity for errors and misappropriations of assets.

Recommendation: OSAI recommends the District develop a written policy and procedures manual to establish the safeguard of assets from misappropriation.

Management Response:

District Attorney: This office currently draws from policy and procedures manuals utilized by the District Attorneys Council and Comanche and Cotton counties. An office manual is in the process of being compiled from these sources.

Criteria: Accountability and stewardship are overall goals of management in the accounting of funds. Internal controls over safeguarding of assets constitutes a process, affected by management and other personnel, designed to provide reasonable assurance regarding the prevention or timely detection of unauthorized transactions and safeguarding assets from misappropriation.

Finding 2013-5 – Inadequate Internal Controls Over Disbursements of the District’s Supervision Program (Repeat Finding)

Condition: During the audit of twenty-four disbursements of the Supervision Program, we noted seventeen instances in which disbursements were paid without a claim for authorization of the payments.

Cause of Condition: Procedures have not been designed to ensure that claims are used to disburse funds to reduce the risk of error or misappropriation of funds.

Effect of Condition: These conditions could result in opportunities for misuse or misappropriation of funds.

Recommendation: OSAI recommends the District use claims in the disbursement process of each program to ensure disbursements are properly authorized and made only to defray the cost of the operation of the office in accordance with Title 22 O.S. § 114.

Management Response:

District Attorney: Following the last audit and recommendations made at that time, we are currently in compliance with this recommendation. There was a three to four month period during which time we made changes, which resulted in this finding.

Criteria: Accountability and stewardship are overall goals of management in the accounting of funds. To help ensure a proper accounting of funds the District should design and implement internal controls to ensure that disbursements are properly authorized for payment to comply with state statute.



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